

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No.

N-605/90

198

~~ExAxxNo~~

DATE OF DECISION 23.4.1991.

Shri Narayan Vithalrao Shastri. Petitioner

Advocate for the Petitioner(s)

Versus

Union of India & Another

Respondent

Shri P.S.Lambat.

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.S.Chaudhuri, Member(A),

The Hon'ble Mr. T.C.Reddy, Member(J).

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *Yes*

P.S. Chaudhuri
(P.S.CHAUDHURI)
MEMBER (A).

(6)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY,
CAMP AT NAGPUR.

Original Application No.N-605/90.

Narayan Vithalrao Shastri.

... Applicant.

V/s.

1. Union of India, Ministry
of Railways,
New Delhi and
2. Divisional Railway Manager,
Hyderabad (Metre Gauge Division),
South Central Railway.

... Respondents.

Coram: Hon'ble Member(A), Shri P.S.Chaudhuri,
Hon'ble Member(J), Shri T.C.Reddy.

Appearances:-

Applicant present in person.
Respondents by Mr.P.S.Lambat.

Oral Judgment:-

¶Per Shri P.S.Chaudhuri, Member(A)¶ Dated:23.4.1991.

This application under Section 19 of the Administrative Tribunals Act, 1985 was filed on 22.8.1990. In it the applicant who was working as Chief Controller, Akola in South Central Railway has prayed for:

- i) Refixation of pension from Rs. 1,432 to Rs.1,450/- by including the officiating pay in grade 2375-3500 for the months of Feb. & March 89, from December 89 onwards and payment of arrears accrued.
- ii) Payment of difference of pay at Rs. 150/- per month for Feb. & March, 1989 plus dearness allowance.

2. The applicant appeared before us and presented his case in person. Mr. P.S. Lambat, learned counsel for the respondent opposed the application. The respondents have also filed their writteb statement,

3. Considering the facts and circumstances of the case the small amounts involved and the fact that both sides were fully prepared to agree their cases, we are of the opinion that it can be decided at the admission stage itself and so we proceed to admit and decide it.

4. By order dt. 19.2.1988 the applicant after selection was promoted and posted as Chief Controller, Vijayawada in the scale of Rs. 2,375 - 3500. On that date there was no vacancy in that grade in Hyderabad Division on which the applicant was working. He submitted a representation dt. 26.3.1988 stating that he is prepared to forego his promotion till a vacancy occurs in Hyderabad Division. It is the case of the respondents that by this refusal he was not eligible for promotion to that grade till the completion of one year from the date of his promotion order. It is their further case that on this basis he was entitled to such promotion only w.e.f. 19.2.1989 and so they have not only given him promotion from that date, viz. 19.2.1989, but have also refixed his pension on that basis at Rs. 1445 plus relief vide order dt. 14.2.1991. Of course, the arrears have not yet been paid to the applicant, but the respondents expect that these will be paid to him shortly.

5. It is the applicant's case that he actually shouldered the higher responsibilities from 1.2.1989 and this is borne out by letters dated 18.5.1989 (at pages 10 and 11 of the application) from the applicant's Superior Officer - Area Officer, Akola. In view of this position, we had on 21.3.1991 specifically directed the respondents to produce any order or paper in support of their contention that from 1.2.1989 to 18.2.1989 the applicant had not discharged the function of Chief Controller, Akola w.e.f. 31.1.1989 A.N. Mr. Lambat's contention was that obviously no such order or paper exists and hence it could not be produced. It is nobody's case that the applicant was never put to work in the promoted post.

...3.

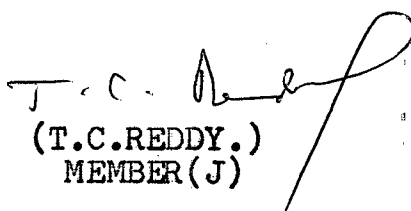
The order dated 13.4.1989 (at page 9 of the application) clearly shows that the applicant was so promoted against the existing vacancy (emphasis supplied). The order does not say from what date this promotion was effective and so what we are required to determine is the date from which this promotion was effective. The order dated 13.4.1989 says that the applicant is promoted against the existing vacancy. It is not disputed that vacancy arose on 31.1.1989 A.N. Consequent on the superannuation of one Shri Loknath. The applicant's superior officer, viz Area Officer, Akola, has said by letter dated 18.5.1989 that the applicant had been asked to take over charge of the post of Chief Controller on 31.1.1989 on the retirement of Shri Loknat and that the applicant is working in the grade of Rs. 2375 - 3500 from 1.2.1989. The only argument that the respondents could offer to oppose the applicant's submission was that he was not put to work in the promoted post w.e.f. 1.2.1989 as he was not entitled to the promoted grade from that date. That argument is obviously un-tenable. The applicant's superior officer has said that the applicant was working in the post. It was not as if the respondents had to promote him. They could just as well ~~have promoted him just as well~~ have promoted his junior on the ground that the applicant was debarred. But, inspite of this, they chose to utilise the services of the applicant in the higher post. If a man works in a post he must be paid as per rules for so doing. The instruction that an employee who refuses promotion is not eligible for promotion for one year certainly empowers the authorities to refuse to promote a senior man for a period of one year. It also empowers them to promote a junior man overlooking those claims of the senior empanelled man. But it does not empower them to refuse to pay a man who has held the charge and performed the duties of a higher post at


their behest. If a man works in a higher post he must be paid for so doing. If the authorities have issued an erroneous promotion order, they may certainly correct their error in accordance with law. But they cannot refuse to pay the man who carried out the erroneous promotion order for the actual period that he held the charge and performed the duties of the higher post. So there is no reason because of which the respondents can refuse to pay the applicant for holding charge of the higher post of Chief Controller in the scale Rs. 2,375 - 3500 from 1.2.1989 till his retirement. It is the applicant's contention that his Superior Officer asked him to discharge the functions of the higher post from 1.2.1989 and this has not been controverted and so he must be paid as per rules for doing so. There is no contemporaneous order from the respondents to the effect that either the applicant had not been put to work in the higher post or that some one else had been asked to discharge the relevant duties. It was Mr. Lambat's second contention that the respondents had not promoted the applicant's juniors during the period that he was not eligible for promotion because that would have affected the applicant's seniority. We are unable to go along with this argument. In fact, it only consolidates the applicant's contention that he had, in fact, discharged the duties of the higher post w.e.f. 1.2.1989.

6. Against this background we have no difficulty in coming to the conclusion that the applicant had actually held and discharged the duties of the higher post of Chief Controller in the scale of Rs.2,375 - 3500 w.e.f. 1.2.1989 not only up to 18.2.1989, which is the period still under dispute, but also from 19.2.1989

till the date of his retirement on 30.11.1989, which is the period in respect of which there is now no dispute. Of course, the pay and allowances of the applicant during the aforementioned period viz. 1.2.1989 to 18.2.1989 and the effect thereof on his pension and other retirement benefits will have to be decided by the respondents in accordance with the rules.

7. We accordingly hold that the applicant occupied and discharged the duties of the higher post of Chief Controller in the scale of pay of Rs.2,375 - 3,500 w.e.f. 1.2.1989 to 30.11.1989 and direct the respondents to fix and pay him his pay and allowances as also his retirement benefits on that basis in accordance with the rules. This shall be completed, including payment of arrears, within a period of 4 months from the date of receipt of a copy of this order. In the circumstances of the case there will be no order as to costs.


(T.C. REDDY.)
MEMBER (J)


(P.S. CHAUDHURI)
MEMBER (A)